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Abstract

This repcrt is directed tcward three major questions: (1) How many mccnlighters are there and do they hold their first and seccnd jcbs in the same industries and occupations? Eccncmists have studied the trends and relaticnships cf mccnlighting and unemployment, hours of wcrk, and wage levels. (2) Whc are the mocnlighters and why do they mccnlight? Psychologists and scciolcgists have attempted tc identify the mccnlighters, draw their profile, and describe their motivaticns. (3) Is moonlighting legal? What degree of ccntrol dc mccnlighters have cver competitive mccnlighting? Arbitrators have sustained discharges and disciplinary actions by some emplcyers, but upheld emplcyee grievances in cther cases. A statistical prcfile cf mccnlighters made by the Eureau cf Labcr Statistics frcm a survey made in 1965 reports that a total of 3.7 million persons were hclding more than cne jcb. These multiple jcb hclders made up 5.2 percent cf all emplcyed wcrkers. (CH)

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Technical Reports Series

MOONLIGHTERS IN A TIGHT LABOR MARKET

Some Legal and Social Views of Recent Experience

by

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February 1967

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Reports in this new series will consist of summaries and reviews of published materials and documents bearing on specific operating problems of general concern to employers or unions. Others will treat current issues and trends in industrial and labor relations which will be of general interest to management, labor, and public; these reports will contain a brief statement of the problem or issue, extracts or summaries of various views on it, and a short bibliography.

INTRODUCTION

> "Internal Moonlighting is tried out to ease a labor shortage. Polymer Corp. of Reading, Pa., learning some of its workers were 'moonlighting' at other concerns, offered them evening work at overtime pay rates in its own operations. Polymer's president asserts the effort 'is working out quite well.' "
>
> Wall Street Journal, Sept. 27, 1966, p. 1

In today's tight labor market, American industries are frantically trying to sell jobs and will consider "any reasonable offer." Recent stories in the Wall Street Journal are a diary of the variety of hiring problems that employers are facing and the solutions they are attempting.

Aug. 22 - Help From Abroad
Labor Shortage Drives Some U.S. Factories to Recruiting in Europe

---

Company Hires 20 English Machinists; Government to Speed Getting of Visas

---

No Fuss from Unions Here

Aug. 25 - Rent-an-Engineer
More Companies Get Technical People from Temporary Help Firms

---

Crash Programs to Meet Military-Order Deadlines Lift Use of 'Contract' Men

---

High Pay, Constant Challenge

Aug. 26 - Whiz Kids
Young Men Move Into Executive Suite Faster At Many Companies

Move Up or Out, AT & T Tells Its Recruits; 27-Year-Old Executive Hired at $35,000

A Talent Shortage Worsens

Oct. 3 - Firm Plans 48-Hour Week To Avoid Labor Shortage

Nov. 29 - Christmas Help grows scarcer. Stores lift pay, lower standards to get workers.

That employers would now encourage the practice of moonlighting as a solution to their woes is an ironical twist, since for years a ban on the practice has been offered as the simplest solution to the unemployment problem. But just as moonlighting did not prove to be a simple solution to unemployment, it may not be without complexities in solving the problem of shortages either. Other Wall Street Journal stories hint of this.

Nov. 15 - Outside Hiring of skilled workers shapes up as an auto bargaining issue.

Nov. 21 - Ominous Sign
Analysts Fear Leveling in Worker Productivity Signals General Decline

---

Labor Pinch, Near-Capacity Operations End Long Rise in Output Per Man-Hour

---

An Old Plant That Can't Quit

Nov. 22 - Pep-Pill Use by factory workers draws increasing concern as a hidden hazard.

It is important at this time to be aware of the current thinking on moonlighting from the economic, sociological, and legal views. This report is directed toward three major questions and briefly reviews the most recent answers of experts from the various fields.

1) How many moonlighters are there? Do they hold their first and second jobs in the same industries and occupations?

Economists have studied the trends and relationships of moonlighting and unemployment, hours of work, and wage levels.

2) Who are the moonlighters and why do they moonlight?

Psychologists and sociologists have attempted to identify the moonlighters, draw their profile, and describe their motivations.

3) Is moonlighting legal? What degree of control do employers have over competitive moonlighting?

Arbitrators have sustained discharges and disciplinary actions by some employers, but upheld the employee's grievances in other cases.

HOW MANY MOONLIGHTERS ARE THERE?

The major tally of moonlighters is made by the Bureau of Labor Statistics, which officially refers to them as "multiple jobholders." It reports that a total of 3.7 million persons were holding more than one job when a survey was made in May 1965. These multiple jobholders made up 5.2 percent of all employed workers, about the same number and proportion as the year before. Since 1956, the figure has stayed between 4.6 and 5.5 percent.

The BLS not only counts the moonlighters but also compiles a statistical profile of the group which is available in the following publication:

"Multiple Jobholders in May 1965"
by Forrest A. Bogan and Thomas E. Swanstrom
Monthly Labor Review: Feb. 1966, pp. 147-154

(Special Labor Force Report No. 63, a reprint of this article with additional tabular material, is available from BLS.)

Highlights of this Special Labor Force Report about moonlighters are that:

* 3 out of 4 are married men;
* 9 out of 10 are white;
* almost half are men 25-44 years old;
* only 3 out of 10 do the same kind of work on both jobs;
* half of them work less than 13 hours a week at the 2nd job;
* one-third work for themselves at the extra job.

Primary Job. Looked at in terms of their primary job, 8 percent of workers in agriculture and 5 percent of those in nonagricultural industries held 2 jobs or more. As in previous years, the highest rate was among workers in public administration, particularly postal workers. Other industrial groupings with high proportions of moonlighters are educational services (teachers), construction, and transportation.

Secondary Job. Service industries offered the second job opportunity for 26 percent of the moonlighters, agriculture for 20 percent, and retail trade for 13 percent.

Occupation. Workers in certain occupations are more likely than others to have second jobs. Men in teaching have consistently had the highest rate of multiple jobholding; in May 1965, 1 out of 5 was holding a second job. Men in protective services (firemen, police, and guards) are at least twice as likely as the average worker to hold two jobs. Fifteen percent of them were dual jobholders even though their average workweek on their primary job (44 hours) was the highest of any nonfarm group.

In relating its data to the charge that persons with 2 jobs are taking jobs away from the unemployed, the BLS found the charge unsubstantiated. This report indicates that the industrial and occupational composition of the moonlighting group does not match that of the unemployed (see tabular data below); their second jobs are only part time; and their self-employment opportunities require skill, experience, or capital which the unemployed do not have.

WHAT PERCENT OF THE WORKERS IN EACH INDUSTRY ARE MOONLIGHTERS?

All Industries	5.2%
Agriculture	8.1
Forestry, fishing, mining	7.1
Construction	6.4
Manufacturing - durable	5.5
Manufacturing - nondurable	4.3
Transportation, public utilities	6.1
Wholesale trade	5.7
Retail trade - eating, drinking	3.1
Retail trade - other	3.5
Finance, insurance, real estate	5.1
Business, repair service	5.7
Private household service	1.2
Personal services	3.6
Entertainment, recreation	5.6
Educational services	7.8
Professional services	4.0
Postal services	11.2
Other public administration	9.7
Self-employed - nonagricultural	3.0
Unpaid family workers	1.5

Source: Special Labor Force Report No. 63, Table 3.

WHAT PERCENT OF WORKERS IN EACH OCCUPATION ARE MOONLIGHTERS?

All Occupations	Total 5.2%	Male 6.7%	Female 2.3%
Medical, health workers	5.8	9.4	3.5
Teachers except college	7.6	19.7	2.4
Other professional, technical	7.2	7.8	4.5
Farmers, farm managers	8.9	9.2	4.9
Managers, officials, proprietors	4.1	4.4	2.7
Clerical workers	3.9	5.5	1.0
Sales workers - retail trade	2.7	5.0	1.1
Sales workers - other	5.2	5.9	-
Carpenters, construction craftsmen	6.4	6.4	-
Mechanics, repairmen	8.4	8.4	-
Other craftsmen, foremen	6.4	6.8	1.1
Drivers, deliverymen	6.9	6.8	-
Other operatives	4.2	5.8	1.0
Private household operatives	1.1	-	.9
Protective service workers	14.3	15.1	-
Waiters, cooks, bartenders	3.0	3.9	2.6
Other service workers	4.5	6.5	3.1
Farm laborers, foremen	7.5	8.5	5.7
Laborers except farm and mine	4.6	4.7	-

Source: Special Labor Force Report No. 63, Table C.

IN WHAT OCCUPATION DO MOONLIGHTERS HOLD THEIR PRIMARY JOB? THEIR 2ND JOB?

All Moonlighters	1st Job 100.0%	2nd Job 100.0%
Medical, health workers	2.3	1.9
Teachers except college	4.0	1.6
Other professional, technical	10.3	10.6
Farmers, farm managers	5.8	16.4
Managers, officials, proprietors	8.2	9.4
Clerical workers	11.4	7.3
Sales workers - retail trade	2.1	4.2
Sales workers - other	2.5	3.2
Carpenters, construction craftsmen	4.6	3.9
Mechanics, repairmen	4.8	3.2
Other craftsmen, foremen	7.0	2.5
Drivers, deliverymen	4.7	5.5
Other operatives	11.9	7.8
Private household workers	.6	1.9
Protective service workers	3.4	1.3
Waiters, cooks, bartenders	1.5	2.7
Other service workers	5.1	6.3
Farm laborers, foremen	4.7	3.6
Laborers except farm and mine	4.9	6.5

Source: Special Labor Force Report No. 63, Table C.

The relationship of multiple jobholding rates with unemployment rates, length of workweek, shift work, overtime, premium rates, and level of income have been subjects of much discussion. Several recent analyses are reviewed below.

"Leisure and the Long Workweek"
by Peter Henle
Monthly Labor Review: July 1966, pp. 721-727.

The extra hours spent at moonlighting seem to contradict the projections of a future decline in the number of working hours. But Henle points out that such predictions overlook an important set of statistics which demonstrate a quite different pattern of behavior. A significant portion of the nation's work force consistently works more than a 48-hour week and from all indications, this proportion has been increasing rather than declining.

In May 1965, 9.4 million nonfarm wage/salary workers were working 49 hours or more; they were almost one-fifth of the full-time work force. Henle explored these BLS data to find out who these individuals are and at what type of jobs they are working. He found men in the primary age groups, married men, and white men more heavily represented than other workers.

Henle points out that the incidence of long hours varies by industry and occupation. Higher rates are prevalent in the trade and service industries and among managerial, professional, sales, and private household workers. In construction, manufacturing, and government, and among blue-collar and clerical workers, the incidence of long hours is lower than the average rate.

For some industries there are significant differences between the proportion of single and multiple jobholders working long hours. In manufacturing and government, for example, where fixed working hours are generally the rule, opportunities are limited for overtime or work beyond 48 hours weekly. The employee who wants to work longer hours than this must obtain a second job. While a relatively small proportion of employees in these industries are working longer than 48 hours on a single job, the proportion of multiple jobholders is relatively high.

Henle identified three types of individuals working long hours:

1) Those who genuinely enjoy their work and, therefore, want to work long hours. (Professional and technical employees.)

2) Those who hold responsible positions and are either required or expected to work long hours. (Managerial employees.)

3) Those who work long hours because they need the additional income.

"Multijobholding and the Short Workweek Issue"
by John Charles Deiter
Ph.D. dissertation in economics
Western Reserve University, 1965, 268 pp.

To determine the relationship between multijobholding and the length of the primary job workweek, this investigator obtained information from 3 groups of workers varying in workweek, location, and industry. He found the following multijobholding rates:

		Type of 2nd Job	
	Total	Wage/Sal.	Self-Employ
36-hour Akron rubber workers	29%	15%	14%
40-hour Akron non-rubber workers	17	10	7
40-hour non-Akron rubber workers	11	6	5

The percent of shortweek rubber workers who moonlight is significantly higher than the 40-hour groups. The percent of them who go into self-employment for their extra work is higher too. But when only wage/salary moonlighting is considered, the short-hour Akron workers' rate is not much above the standard-hour Akron workers, although it is still significantly higher than the non-Akron group.

Three factors were related to the wage/salary moonlighting rate: relatively short tenure on primary job, low income on primary job, and 3 or more children in the family.

* * *

"Observations on Overtime and Moonlighting"
by Richard Perlman
Southern Economic Journal: Oct. 1966, pp. 237-244.

Although a worker would be willing to work additional hours at his primary job at a rate below his straight-time wage, Perlman says it does not follow that he would do it on any other job. Considering the additional costs, effort, and problems of adjustment to a new work setting, it would require a wage rate somewhat higher than the minimum extra-hours rate on his primary job to induce him to moonlight.

Currently, the typical moonlighter works part time on his secondary job, under a flexible self-determined schedule. But if the workweek in manufacturing should decline substantially, Perlman suggests many would-be moonlighters might look to this field for their second job.

In studying the underemployed worker's willingness to moonlight in relation to the wage of his primary job, Perlman finds the crucial determinant to be the basis of his desire for extra income. If he wishes to fulfill a set consumption pattern, then his number of underemployed hours will fall with an inc ease in his first-job wage. On the other hand, if his inability to reach undefined higher income levels with his first-job income leads him to moonlight, his underemployed hours will increase with an increase in first-job wages.

WHO ARE THE MOONLIGHTERS? PROFILE OF THE BREED

Translating economic trends and cycles of multiple jobholding into the nature of individual moonlighters provides numerous human interest stories. Many are recorded in "Making Ends Meet -- By Moonlight" by Theodore Irwin (NY Times Magazine: 4/3/66, pp. 73 and 76).

Experiences range from the minister who supplements his pastoral income by promoting well-drilling and selling insurance to the baritone taxi driver who sings at an opera theater in the evenings. A short order cook works nights so he can umpire minor league baseball in the daytime. Writers and artists work as night janitors so they can spend the days creating. Moonlighting teachers are doing everything from selling cemetery lots to repairing shoes and laundering school football uniforms.

Policemen and postal workers have also been reported to have some seemingly contradictory jobs. But recently heralded by Wall Street Journal (7/21/66, p. 1) as the champion moonlighter in the Federal service is James Bond, Southwest regional director of the Department of Health, Education, and Welfare, whose private ventures in oil, banks, insurance, savings and loans, electronics, and ranching make him a millionaire. His superiors have detected no conflict of interest in this situation. Bond himself argues that being a successful businessman adds enormously to his effectiveness as a welfare dispenser. Familiarity with cost-cutting methods gleaned from his extra-curricular business career, he asserts, saves taxpayers substantial sums. Moreover, in bridging the gulf between businessmen and Government uplifters he says they "wouldn't let me in the back door if I were just a do-gooder."

Another government agency, the Veterans Administration, did not look approvingly when discovering that all 110 resident doctors at its Long Beach, California hospital were holding other jobs. Its answer was an ultimatum: quit the outside job or resign. A few resigned. Others brought suit against VA officials, contending the ban is discriminatory and a denial of due process.

Surprising to the general public are individual cases of "Moonlighting MD's" reported in connection with the above case (Wall Street Journal: 2/2/66, p. 1). After 1 year as an intern and 4 years as a resident, Dr. B, 34 years old, is chief surgical resident. For his 85-hour week he is paid $6500 annually with which to support his wife and 2 small children and pay off a several thousand-dollar debt on his medical school education. He adds $200 a month to his income by making night house calls for an older, established physician "who doesn't like to get up at night." This moonlighting often keeps him on his feet for 40-hour stretches and violates the rule of his hospital.

Equally surprising is the number of moonlighters in the affluent income brackets. A 1966 study published by Brookings Institute, Economic Behavior of the Affluent, reports that among Americans at an income level of $12,000, 1 out of 8 earners held a second job; at the $200,000 level, 3 out of 8 did. Author Robin Barlow's interviews with a sampling of 976 persons with incomes above $10,000 disclosed that their median workweek was 48 hours, and 1 out of 4 worked 60 hours or more.

Just how these moonlighters manage to do all that they do stirs up a lot of interest among those who sit back and read about it. But for those who are looking for helpful hints to use themselves, there is published a 32-page Moonlighters' Guide to Part-Time Work by the Moonlighter Associates of Albert Lea, Minnesota.

But among the professional investigators, the question is not how they do it, but rather why and with what effect. The reasons for moonlighting are being satisfactorily explored. Most of the studies include a consideration of the effect on the employee. But its effect on the employer can only be inferred. Satisfied employers say little, they just purr away. Dissatisfied ones are involved in arbitration cases discussed in the next section.

Psychiatrist Alexander Martin says moonlighting is often a symptom of inability to adjust to the leisure time offered by modern civilization, and is frequently prompted by psychological rather than economic necessity (NY Times: 11/8/65). Dr. Martin claims that Western man seems seriously unprepared for his new-found freedom and often becomes a compulsive participant in activities that do not meet his basic need -- that of improving his inner resources. He criticizes the many "leisure-time marketeers" who have led people to believe that more activities and facilities will provide effective adaptation to greater amounts of free time, saying that they are exploiting the problem rather than attacking it. He could have noted the completion of the cycle which occurs when a man is forced to moonlight in order to pay for the costs of his leisure-time activities.

Two large-scale studies of the motivations of moonlighters are reviewed below. Wilensky is concerned with a relatively higher socio-economic group than the shift-work production employees interviewed by Mott.

"The Moonlighter: A Product of Relative Deprivation"
by Harold Wilensky
Industrial Relations (U. of Calif., Berkeley): Oct. 1963, pp. 105-121.

Wilensky compared moonlighters with other men in 7 samples ranging from upper middle-class professionals to high-income operatives.

He identified the moonlighters as being caught in a "life-cycle" squeeze. "In sum," he concluded, "although each biography is unique, the general picture is one of social discontinuity -- chaotic work histories, blocked upward moves (often including comparisons with the father in which the moonlighter comes off second best), and sometimes unusual patterns of change in religion or residence. These are combined with modest aspirations for money, goods, and occupational status, an unhappy imbalance between family needs and family resources, and the chance to alleviate the problem by filling in with an extra job."

* * *

"Hours of Work and Moonlighting"
by Paul E. Mott
Hours of Work (Harper & Row, 1965), pp. 76-94.

Mott's study of moonlighters was part of a larger investigation of shift work, but when he found 28 percent of the afternoon shift and 32 percent of the night shift were moonlighting, he pursued this topic.

He concluded, "There are probably three key characteristics that distinguish the moonlighter from the non-moonlighter:

1) His personality profile;

2) His physical capacity for activity;

3) His higher levels of economic aspirations.

He is surgent, dominant, tough-minded, and not easily given to resignation. He is so energetic that he can maintain two jobs, be active in voluntary associations, and still shun the more sedentary leisure activities of the non-moonlighter in favor of the more vigorous ones."

IS MOONLIGHTING ILLEGAL?

Many police and firemen are forbidden off-duty employment by local laws passed at a time when the main concern was that extra work would impair their physical ability to perform their duties. Such laws are widely ignored and some attempts are being made to modify them.

Managerial suspicion that the moonlighter is less productive, more accident-prone, and more frequently absent than other workers has led to some devious methods of detection and a variety of legal actions.

One of the most ironical cases was that of 20 postal workers in Philadelphia who were fined and suspended for moonlighting at state liquor stores while on sick leave. Abuses in 8 big-city post offices were charged and the federal agency announced it will scan sick leave records with computers to single out excessive users.

In contrast, almost half the moonlighters in Dieter's Akron study (described earlier) said their employer knew about their second jobs and were almost unanimous in believing he had no adverse reaction toward it. About a third of them said their union objected to the practice.

Unions have generally not favored moonlighting. They want workers paid enough so that a second job will be unnecessary. Their concern is serious, however, when a worker takes a second job at substandard wages and benefits and enables a non-union employer to reduce full-time job opportunities. Otherwise, whether a man has an extra job is widely regarded by unions as his personal affair.

But some managements have seen evils or potential problems in specific cases of dual jobholding. Since an employee seeking a second job is naturally inclined to solicit work for which he is best suited and most experienced, this might necessitate his working for his employer's competitor or offering his services directly to his employer's potential customers. Many managers feel compelled to take discharge action when a man they have trained for a job moonlights with a competitor, leaking information and trade secrets.

Three recent arbitration cases illustrate varying degrees of employer control and the complexity of trying to deal with moonlighting, especially competitive moonlighting.

1) An employer, without any specific rule against moonlighting, was sustained in his discharge of an employee, knowledgeable in trade secrets, even before his employee was actually working for a competing firm.

2) Another employer did not bar moonlighting but attempted to control it by cracking down on absenteeism traceable to it; however, the arbitrator did not sustain his discharge of an employee absent due to an injury received on his second job.

3) In a third case, a company with a stated policy dealing with "outside interests and activities" and requiring positive employee loyalty was not sustained in its discharge of an employee who sold competing products at his own agency, because the employee did not know the policy existed.

Details of these cases are given below.

Protecting Trade Secrets 46 LA 1009 6/30/66

A company doesn't have to wait for an employee to go to work for a competing company before it can take disciplinary action to protect itself against the employee's possible use of the company's trade secrets, according to Arbitrator Whitley P. McCoy.

The Pipe Coupling Manufacturers, Inc. discharged an employee for associating himself with a group planning to establish a competing company, and showed that he had taken an active part in their deliberations. He happened to have a widely-diversified knowledge of the company's operations including the names of customers and other classified information.

The Steelworkers union insisted that the employer was forestalled from acting against an employee who had not yet gone to work for a new company. But McCoy said that the employer's right to act extended in a case of this type to some of an employee's preliminary relationships with a possible competitor.

He ruled that because Pipe Manufacturers is in "a small and highly competitive industry" and because of "the danger of losing business through the disclosure of confidential information, I think the Company had the right to lock the stable door before the horse was stolen."

Absenteeism Traceable to Moonlighting 47 LA 142 8/3/66

In a decision at Evinrude Motors, Arbitrator John P. McGury dealt with management's attempt to control moonlighting by cracking down on absenteeism or other inefficiencies traceable to outside jobs.

The company's rule, incorporated into the contract by a special clause, does not bar second jobs by employees. Instead, it provides that employees are subject to disciplinary action when their "quality of workmanship" or their "attendance" suffers because of working at another job.

In the case of an employee who lost part of two days work because of a minor eye injury suffered on another job, McGury held that the company went too far in firing him. He found no showing of the employee's workmanship or attendance suffering from his second job. He also noted that the moonlighting clause provides for disciplinary action as opposed to the 8 categories in the agreement with the Steelworkers calling for discharge.

Company Loyalty Policy Not Known 47 LA 372 5/16/66

Despite an ambitious program to advertise its policy of requiring and encouraging positive employee loyalty toward its products, the Phillips Petroleum Company failed to get the message across to an employee fired for selling competing oil and gas products at his own marine supply agency, according to Arbitrator James F. Caraway.

The company policy on employees' outside interests and activities was described in a booklet called, "You and Phillips 66." The booklet was revised on several occasions without changing the 25-year old policy, and the revised version was distributed to all employees. The plant newspaper and a special Employee Sales Assistance Program also underscored the policy.

In this instance, the employee denied ever having read or received a copy of the booklet. Other union witnesses among the employees also denied knowledge of the policy. Stressing this testimony, Caraway concluded that the company had failed to establish that the discharged employee knew of the policy in question.

* * *

Two studies of arbitration cases dealing with competitive moonlighting and employee disloyalty are reviewed below.

"Competitive Moonlighting: A Study of Arbitration Cases"
by John E. Sutcliffe
ILR Research (Cornell): No. 1, 1965, pp. 9-12.

This is an examination of 11 arbitration cases between 1947 and 1964 in which the issue in question was the employer's right to discharge a moonlighting employee as a potential threat to the company's competitive position.

The collective bargaining agreement in each instance failed to prohibit the practice of competitive moonlighting. In most cases there was no proof of tangible loss to the company and job performance was unaffected.

In 9 cases the employer's use of discipline was not questioned by the arbitrator although the penalty was frequently reduced from that of discharge. The 2 arbitrators who did not uphold the employer's action emphasized the absence of a rule prohibiting competitive moonlighting and placed the burden of proof on the employer, rather than assuming that a competitive threat per se was ground for discharge.

This author is critical of the quality and quantity of evidence in these cases. Employers have not established in writing the conditions under which moonlighting would be permissible. "The arbitrators in most cases," he says, "have sanctioned this carelessness by upholding the right to protect the company's interest regardless of how remote the potential damage may be or what price the employee must pay."

He argues that there must be a line drawn beyond which preventive measures to protect competitive interests do not infringe on the employee's rights. Meanwhile, he warns workers that unless their employers give explicit permission, they should not engage in competitive moonlighting if they value their jobs with the primary employer.

"Disloyalty to the Employer: A Study of Arbitration Awards"
by Howard G. Foster
Arbitration Journal: Vol. 20, No. 3, 1965, pp. 157-167.

This is an examination of 18 arbitration cases involving discharge on ground of alleged employee disloyalty to his employer. The most common circumstance was competitive moonlighting.

It is the impression of this author that "the absence of a rule, contractual or otherwise, is not truly significant in moonlighting cases." He found that the issue generally was decided on other grounds. If the arbitrator felt that a discharge was warranted under the circumstances of the case, the absence of an explicit regulation was easily circumvented. If he felt that there was no cause for discharge, he could point to the lack of formal prohibition in order to justify upholding the grievance. On the other hand, if such a rule was in effect, arbitrators seldom questioned its fairness or the employer's right to enforce it.

An issue frequently arising in cases of outside employment is deteriorization of work. If an employee's work does not meet the standards uniformly required by his employer, there is cause for discharge. If an employee's outside activities tend to impair his performance on the job, the company has a right to insist on the curtailment of these activities and to subsequently discipline the worker who does not comply.

The author, however, cites 2 cases in which such discharges were set aside (Janitorial Service: United Engineering). The crucial factor was the absence of evidence disclosing a causal relationship between moonlighting and poor work. Although the inferior quality of the work was acknowledged by the arbitrators, both ruled that the simple concurrence of poor work and moonlighting did not constitute cause for discharge, but that the former had to be a direct result of the latter. The outcome could have been different if the discharge had been based on poor work.

A corollary to the principle in these cases is pointed to in a case involving a cemetery association and one of its diggers, who was discharged on grounds that he called in sick and subsequently reported for his second job as a bartender. The employer accused him of malingering. Again, the arbitrator held that the absenteeism must be caused by the second job and that the mere fact that the worker reported to his other job did not constitute proof of such a causal relationship. The employee's argument that his injured arm precluded the heavy work at the cemetery but not the relatively light duties of a bartender was accepted and the grievance sustained.

Arbitration Cases Involving Competitive Moonlighting or Disloyalty

Company	Citation	Date	Arbitrator
Merrill Stevens Dry Dock & Repair Co.	6 LA 838	Mar. '47	Marshall
Armen Berry Casing Co.	17 LA 179	Sept. '50	Smith
Beech Nut Packing Co.	not cited	Mar. '55	McKelvey
Mechanical Handling Systems, Inc.	26 LA 401	Jan. '56	Keller
American Monorail Co.	27 LA 540	Nov. '56	Kates
Branch River Wool Combing Co.	31 LA 547	Oct. '58	Pigors
Janitorial Service, Inc.	33 LA 902	Nov. '59	Whelan
Cummins Diesel Sales Corp.	34 LA 636	May '60	Gorsuch
United Engineering & Foundry Co.	37 LA 1095	Feb. '62	Kates
Firestone Retread Shop	38 LA 600	May '62	McCoy
Ravens-Metal Products, Inc.	39 LA 604	Aug. '62	Dworkin
John Thomas Motor, Inc.	40 LA 1293	Aug. '63	Jenkins
Goodyear Tire & Rubber Co.	41 LA 1126	Nov. '63	Lehoczky
Danbury Cemetery Assoc.	42 LA 446	Mar. '64	Stutz
F. E. Myers and Bro. Co.	43 LA 338	July '64	Teple

The citation refers to Labor Arbitration Reports, published by the Bureau of National Affairs, Washington, D. C.